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Docket No. 100200768-1

Remarks

This Amendment is responsive to the Restriction Requirement of October 11, 2006. Reexamination and reconsideration of claims 1-18 and 20-36 is respectfully requested.

Summary of The Restriction

Restriction to one of the following species was required under 35 U.S.C. 121, as described in the Office Action:

Species A: Readable on claims 1-6 relating to a first distance between the first heater and the second heater; and a second distance between the first and second drive transistors;

Species B: Readable on claims 7-18 relating to a first spacing between the drive transistors in the first primitive group; and a second spacing between the drive transistors in the second primitive group;

Species C: Readable on claims 20-36 relating to a first distance between the first drive transistor and the first firing heater element centerline-to-centerline; and a second distance between the second drive transistor and the second firing heater element centerline-to-centerline.

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Election

Applicant elects, with traverse, Species C. A listing of claims readable on Species C are claims 20-36.

Applicant traverses the restriction as follows.

MPEP 809.02(a) "Election of Species Required" cites MPEP § 808.01(a) for determining when a restriction between species is appropriate. MPEP 808.01 states:

MPEP 808.01 Reasons for Holding of Independence or Distinctness

The particular reasons relied on by the examiner for holding that the inventions as claimed are either independent or distinct should be concisely stated. A mere statement of conclusion is inadequate. The reasons upon which the conclusion is based should be given.

For example, relative to a combination and a subcombination thereof, the examiner should point out the reasons why he or she considers the subcombination to have utility by itself or in other combinations, and why he or she considers that the combination as claimed does not require the particulars of the subcombination as claimed. (MPEP 808.01)

The Office Action articulates that the reason for requiring an election of a single species as:

"The species are independent or distinct because the distances defined in above species have different geometric measurements and hence, are distinct from each other."
(Office Action, page 2)

Applicant respectfully submits that the reason of "different geometric measurements" does not appear as a valid reason under MPEP 808.01 and does not prove that the identified species are independent and distinct. Firstly, none of the claims recite measurements, thus the reasons for restriction do not apply. Furthermore, for proving distinct claims in a restriction, MPEP 806.05(e) states, "The burden is on the examiner to provide reasonable examples that

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recite material differences.” Since no examples have been provided, a prima facie case for the propriety of the restriction requirement has not been presented. Thus, the restriction should be withdrawn.

As an additional reason for traversal, a comparison of the limitations and scope of each independent claim shows that the claims share many of the same limitations. Thus, the independent claims overlap in scope and therefore, the species are not mutually exclusive. Accordingly, restriction between claims limited to species should not be required based on MPEP 806.04(f), which states:

MPEP 806.04(f) Restriction Between Mutually Exclusive Species

Where two or more species are claimed, a requirement for restriction to a single species may be proper if the species are mutually exclusive. Claims to different species are mutually exclusive if one claim recites limitations disclosed for a first species but not a second, while a second claim recites limitations disclosed only for the second species and not the first. This may also be expressed by saying that to require restriction between claims limited to species, the claims must not overlap in scope. [Emphasis Added]

In view of MPEP 806.04(f), the identified species are not mutually exclusive and the restriction should be withdrawn.

Additionally, Applicant respectfully notes that all the pending claims have already been fully examined, twice. Two full searches have been performed and two Office Actions have already been issued (Nov. 2, 2005 and April 18, 2006) with two substantive examinations. Applicant fails to see how a restriction can now be warranted when the claims have already been examined. Thus, the restriction is not justified and should be withdrawn.

Applicant respectfully requests that the restriction be withdrawn and that all pending claims be examined in view of Applicant's previously filed response dated July 14, 2006.

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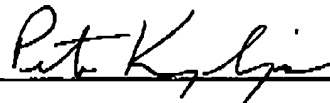
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Conclusion

For the reasons set forth above, **claims 1-18 and 20-36** patentably and unobviously distinguish over the references of record and are now in condition for allowance. An early allowance of all claims is earnestly solicited.

Respectfully submitted,



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